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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Henrick et al.

Serial No.: 10/606,691

Filed: June 26, 2003

For: WIRELESS PORTABLE INFORMATION STORAGE AND RETRIEVAL
DEVICE

Group: 2617

Examiner: Nguyen, Khai Minh

Durham, North Carolina
January 10, 2007

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATION OF FACSIMILE TRANSMISSION

Sirs:

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax. No. 571-273-8300 on the date set forth below

1. Transmittal of Appeal Brief (2 pages);
2. Appeal Brief (20 pages)

Marianna Tortorelli

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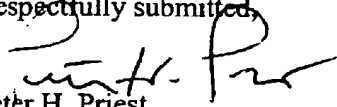
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Date: January 10, 2007

[x] The Commissioner is hereby authorized to charge any additional fees which may be required or credit any overpayment to Deposit Account No. 50-1058.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of : Henrick
For : Wireless Portable Information Storage and
Retrieval Device
Serial No. : 10/606,691
Filed : 06/26/2003
Group : 2617
Examiner : Nguyen, Khai Minh

Durham, North Carolina
January 10, 2007

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANT'S BRIEF

Sir:

1. The Real Party In Interest

The real party in interest is the assignee, Lucent Technologies Inc.

2. Related Appeals and Interferences

None. However, it is noted that the present application is a continuation of U.S.

Application Serial No. 09/314,796 filed May 18, 1999, which issued as U.S. Patent No.

6,628,940, which is in turn a continuation of U.S. Application Serial No. 08/688,916 filed July

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31, 1996, which issued as U.S. Patent No. 5,940,752. It is noted that the parent case issued after an appeal brief was filed and prosecution was reopened.

3. Status of the Claims

This is an appeal from the July 11, 2006 final rejection of claims 22-39, all of the pending claims. Claims 22-39 were rejected under 35 U.S.C. § 102(e) as unpatentable over Ozaki et al. U.S. Patent No. 5,933,478 ("Ozaki"). Claims 1-21 have been previously cancelled without prejudice. Pending claims 22-39 are the subject of this appeal.

4. Status of Amendments

The claims stand as last amended in the Preliminary Amendment filed July 31, 2003. No Amendment After-Final has been filed.

5. Summary of Claimed Subject Matter

As discussed in the Summary of the Invention, for example, among its several aspects, the present invention addresses the remote programming of a portable information storage and retrieval device with data stored in and transmitted from a personal computer. Page 2, lines 20-29. Exemplary information, such as a dialing directory, appointments, reminders, as well as other data and information is easily inputted and stored. Page 3, lines 2-4. A rapid exchange of information is supported while undesired information and interference from third parties through the cellular network is avoided by allowing the user to configure the device into a data download mode. Page 3, lines 9-12. This approach also allows the user to control the information and time of the download from the personal computer to the portal device. Page 3, lines 12-14. Where the device is a cellular telephone, this arrangement insures that the cellular telephone is available for a call when the user needs it to be. Many portable information storage and retrieval devices for wireless communication are characterized by small displays and reduced size dialpads which

may make manual data entry onerous. The present invention provides for easy input and maintenance of the information on an ongoing basis.

As illustrated in Fig. 1, and addressed at page 4, line 5 - page 5, line 24, a computer 101 is used by a user to input, maintain and organize information, such as a lengthy directory or personal organizer software, that is sent to the user's cellular telephone terminal 105. Computer 101 communicates digital information through modem 102 and wire telecommunications network 103 to a cellular site 104 which in turn wirelessly communicates through the air to the cellular telephone terminal 105. Prior to the call being made from computer 101, the user configures the cellular telephone terminal 105 in an information or data receive mode. By way of example, the user is able to configure terminal 105 through an interface having interface buttons 106 and display 107. When the call is then made, the cellular telephone terminal 105 accepts the modem call from computer 101 and proceeds to download data using modem protocols. As described at page 7, line 20-page 8, line 10, Fig. 4 shows a block diagram of components of a terminal 400 configurable for providing the functions of terminal 105. Terminal 400 is augmented by the addition of either a hardware or software modem 401 for allowing the reception of digital data directly into the terminal using the same wireless communication channel used for normal voice communication.

In this context, as addressed further below, claim 22 requires "configuring means for placing said device in a receive mode for receiving said digital information from the personal computer over said wireless communication path, said communication means receiving said digital information from the personal computer after said device is configured by said configuring means to receive said digital information". Claim 29 requires the steps of "configuring said device in a receive mode for receiving digital information" and "receiving said

digital information from the personal computer over the wireless communication path after said device is configured to receive said digital information". Claim 33 requires "a user interface for placing said device in a receive mode for receiving said digital information from the personal computer over said wireless communication path, said communication component receiving said digital information from the personal computer after said device is configured by said user interface to receive said digital information".

Claim 22

Claim 22 addresses "a portable information device", such as the cellular telephone terminal 105 of Fig. 1 described generally at page 4, line 5-page 5, line 24, and more particularly at page 4, lines 10 and 20, and page 5, lines 3-24; and the cellular telephone terminal 206 of Fig. 2 described generally at page 5, line 25 – page 6, line 30, and more particularly at page 5, line 28, page 6, lines 1-30. Details of a cellular telephone terminal 400 configurable for providing the functions of either terminal 105 or terminal 206 are provided at page 7, line 20 – page 8, line 10. A further cellular telephone terminal 605 is discussed in the context of Fig. 6 at page 9, line 14-page 10, line 15. Page 2, lines 25 and 26, for example, recognize that such portable cellular terminals serve as portable information storage and retrieval devices for data.

The "portable information device" of claim 22 configures "a memory for storing and returning digital information" such as the storage addressed at page 5, lines 12-24, page 6, lines 27-30, for example, and accessing such data is described at page 8, lines 1-10, particularly lines 8-10, for example.

The "portable information device" of claim 22 also comprises "communication means for connecting to a communication path established between a personal computer and said device, said communication path including a portion comprising a wireless communication path in a

cellular telephone system.” The cellular telephone terminals 105, 206, 400 and 605 comprise exemplary such means. As one example, as described at page 8, lines 23-25, “the computer modem initiates the telephone call, and the cellular telephone terminal automatically answers the call and receives all data in step 508” after the cellular telephone terminal is configured by the user in “information download mode” as described further below.

The “portable information device” of claim 22 also comprises “configuring means for placing said device in a receiver mode for receiving said digital information from the personal computer over said wireless communication path, said communication means receiving said digital information from the personal computer after said device is configured by said configuring means to receive said digital information, said communication means storing received digital information into said memory.” Exemplary configuring means are described at page 5, lines 3-24. Prior to the initiation of the telephone call to the cellular telephone terminal 105 for transmitting the desired data to this unit, this terminal is first configured in an information or data receive mode by the user. The user is able to configure the terminal 105 through an interface which includes interface buttons 106 and cellular display 107. This interface permits the user to access a program in memory therein that configures the terminal 105 in the data receive mode. See, also, the discussion at page 6, lines 21-30 (interface buttons 207 and display 208 of terminal 206); and page 7, line 20 – page 8, line 10 (modifications to firmware 402 in terminal 400 provided to configure telephone terminal 400 to accept data, and to define feature flow and added “information download mode”).

As further discussed at page 8, lines 2-10, the requirement of the user to configure the telephone terminal into this special mode before any data is added advantageously provides security for and control over the download period, and only allows downloads during user

selected periods. As addressed in greater detail below, Ozaki does not teach the present claims.

Claim 29

Claim 29 addresses a "method of remotely programming a portable information device, said device operating to wirelessly communicate in a cellular telephone system." An exemplary method is shown in Fig. 5 and discussed at page 8, lines 11-28. Further support is found in the discussion of the embodiments of Figs. 1-4 and 6. Specific support of the "portable information device" is discussed in detail above in connection with the discussion of claim 22.

The claimed "method of remotely programming" comprises "configuring said device in a receive mode for receiving digital information", as described at page 8, lines 20 and 21, for example. Further details of this configuring step are discussed above in the discussion of the "configuring means" of claim 22.

The claimed "method of remotely programming" also comprises "connecting to a communication path established between a personal computer and said device, said communication path including a portion comprising a wireless communication path in a cellular telephone system", as described at page 8, lines 23-25. Further details of the claimed "communication path" are provided above and at page 4, line 5-page 6, line 20 which discuss Figs. 1 and 2 both of which show a "path including a portion comprising a wireless communication path in a cellular telephone system."

The claimed "method of remotely programming" also comprises "receiving said digital information from the personal computer over the wireless path after said device is configured to receive said digital information" as described at page 8, lines 20-28, for example. Further details of this step of "receiving" are addressed above in connection with the discussion of the "configuring means" of claim 22.

Claim 33

Claim 33 addresses a "portable information device" such as the cellular telephone terminal 105 of Fig. 1 described generally at page 4, line 5-page 5, line 24, and more particularly at page 4, lines 10 and 20, and page 5, lines 3-24; and the cellular telephone terminal 206 of Fig. 2 described generally at page 5, line 25 – page 6, line 30, and more particularly at page 5, line 28, page 6, lines 1-30. Details of a cellular telephone terminal 400 configurable for providing the functions of either terminal 105 or terminal 206 are provided at page 7, line 20 – page 8, line 10. A further cellular telephone terminal 605 is discussed in the context of Fig. 6 at page 9, line 14-page 10, line 15. Page 2, lines 25 and 26, for example, recognize that such portable cellular terminals serve as portable information storage and retrieval devices for data.

The "portable information device" comprises "a memory for storing and retrieving digital information" such as the storage addressed at page 5, lines 12-24, page 6, lines 27-30, for example, and accessing such data is described at page 8, lines 1-10, particularly lines 8-10, for example.

The "portable information device" also comprises "a communication component connecting to a communication path established between a personal computer and said device, said communication path including a portion comprising a wireless communication path in a cellular telephone system." The cellular telephone terminals 105, 206, 400 and 605 comprise exemplary communication components. As one example, as described at page 8, lines 23-25, "the computer modem initiates the telephone call, and the cellular telephone terminal automatically answers the call and receives all data in step 508" after the cellular telephone terminal is configured by the user in "information download mode" as described further below.

The "portable information device" also comprises "a user interface for placing said device

in a receive mode for receiving said digital information from the personal computer over said wireless communication path, said communication component receiving said digital information from the personal computer after said device is configured by said user interface to receive said digital information, said communication component storing received digital information into said memory." An exemplary user interface is described at page 5, lines 3-24. Prior to the initiation of the telephone call to the cellular telephone terminal 105 for transmitting the desired data to this unit, this terminal is first configured in an information or data receive mode by the user. The user is able to configure the terminal 105 through an interface which includes interface buttons 106 and cellular display 107. This interface permits the user to access a program in memory therein that configures the terminal 105 in the data receive mode. See, also, the discussion at page 6, lines 21-30 (interface buttons 207 and display 208 of terminal 206); and page 7, line 20 – page 8, line 10 (modifications to firmware 402 in terminal 400 provided to configure telephone terminal 400 to accept data, and to define feature flow and added "information download mode").

6. Grounds of Rejection to be Reviewed on Appeal

Claims 22-39 stand rejected under 35 U.S.C. § 102(e) as being unpatentable over Ozaki.

7. Argument

The final rejection under 35 U.S.C. § 102(e) did not follow M.P.E.P. § 706.02 which states at page 700-223:

The distinction between rejections based on 35 U.S.C. 102 and those based on 35 U.S.C. 103 should be kept in mind. Under the former, the claim is anticipated by a reference. No question of obviousness is present. In other words, for anticipation under 35 U.S.C. 102, the reference must teach every aspect of the claimed invention either explicitly or implicitly. Any feature not directly taught must be inherently present.

As will be illustrated below, the claims of the present invention are not anticipated by Ozaki.

A. Rejection under 35 U.S.C. § 102(e) over Ozaki

The Art Rejections

As an initial matter, it is noted that the present application claims a priority of **July 31, 1996**. 35 U.S.C. 102(e) reads in pertinent part "the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent". Consequently, it is incumbent to put oneself in the shoes of one in July 31, 1996, the constructive invention date of the present invention. The fact that certain aspects of the invention have become ubiquitous over the past ten years is not relevant.

Further, it is not admitted that Ozaki is in fact prior art. Nonetheless, in light of the long passage of time and the significant differences between the relied upon portions of Ozaki and the present claims, applicant has elected not to undertake the effort to seek to swear back of Ozaki. Further applicant has not acquiesced in the analysis of the Official Actions during examination and traversed that analysis as not supported by Ozaki.

The Official Action prior to the final Official Action pointed specifically to col. 7, line 61-col. 8, line 16 of Ozaki as showing "configuring means" as claimed by claim 1. That Action relied on the same text of Ozaki with respect to the "configuring" and "receiving" steps of claim 29 and the "user interface" of claim 33. For ease of reference, the text at col. 7, line 61-col. 8, line 16 of Ozaki is reproduced below in its entirety:

Fig. 1 is a diagram showing the outline of the whole structure of an automatic data transfer system of this invention. In Fig. 1, numeral 100 represents a handheld terminal device (corresponding to "a handheld terminal device with a communication function" cited in the appended claims), numeral 110 represents a host computer for the communication with the handheld terminal device, numeral 120 represents a public telephone line, numeral 130 represents a base station for

transmitting a message to the handheld terminal device 100 over radio waves, and numeral 140 represents a handheld phone base station for the communication with the handheld terminal device 100 over radio waves.

The host computer 110 transmits a message ("new arrival message" in appended claims) to the handheld terminal device 100 via the base station 130. This message contains an identifier of a file (or electronic mail, corresponding to "data" in appended claims) to be fetched by the handheld terminal device 100. Upon reception of the message, the handheld terminal device 100 performs data communications with the host computer 110 by using a handheld phone function thereof, and fetches the file (or electronic mail) designated by the message.

There is no teaching and no suggestion of the claimed "configuring means", "configuring" and "receiving" steps or "user interface" in the above reproduced text. Ozaki's above described approach does not provide the advantage of limiting downloads to user selected periods. As a consequence, an Ozaki device might be subject to attack by a hacker or the like. Alternatively, an Ozaki user might miss an important call as a result of an interrupting message or download of an update from a host computer.

In response to the above analysis by the applicant, the final Official Action directed attention to Ozaki's Figs. 1, 2 and 12 and the text at col. 11, line 52-col. 12, line 23 stating at page 2, par. 1 "transceiver unit 107 dial to establish a line connection to the host computer 110, and data acquisition processing is activated when the message reception unit 105 receives the new data file arrival message from the host computer."

Again, for ease of reference Ozaki col. 11, line 52-col. 12, line 23 is set forth below:

Fig. 11 is a flow chart illustrating the outline of data acquisition processing to be executed by the handheld terminal device with the communication function shown in Fig. 2. This data acquisition processing 500 is activated when the message reception unit 105 shown in Fig. 2 receives the new data file arrival message from the host computer 110. Referring to Fig. 11, when the data acquisition processing 500 is activated, the new arrival message 200 (see Fig. 4) received from the host computer 110 is analyzed to branch the processing in accordance with the contents of the command 201 in the message 200 (Step 501). Specifically, if the contents of the

command 201 indicate the "new file arrival notice" command, a file fetch processing 510 is executed, and if the contents of the command 201 indicate the "new electronic mail arrival notice" message, an electronic mail fetch processing 520 is executed.

Fig. 12 is a flow chart illustrating an example of the file fetch processing to be executed by the handheld terminal device with the communication function shown in Fig. 2, under a data file automatic transfer control. Referring to Fig. 12, the characteristic feature of this embodiment is that a user is instructed to confirm whether the file is fetched or not (Step 515). Fig. 13 shows a display example on the screen for the confirmation by the user at the processing illustrated in FIG. 12. Numeral 800 represents a window for the confirmation of file fetch by the user, numeral 801 represents a file fetch confirmation message, numeral 802 represents a fetch button, and numeral 803 represents a fetch denial button. Such a display operation is performed when the control unit 101 of the handheld terminal device 100 shown in Fig. 2 executes a program stored in the storage unit 104.

If the user instructs a fetch denial at Step 515 (if the fetch denial button 803 is depressed), the process is terminated. If the user instructs a data fetch (if the data fetch button 802 is depressed), the telephone number 212 contained in the new arrival message 200 is first read and the handheld phone transceiver unit 107 redials this number 212 to establish a line connection to the host computer 110 (Step 511).

While the above language will be addressed further below, it describes an "automatic file transfer control" process in which the user causes a command to be sent to the host computer to initiate file transfer so that reception of the file is not at the convenience of the user and is not subject to the user's control by utilizing "configuring means", "configuring steps", or a user interface as presently claimed.

Claim 22

Claim 22 requires "configuring means" which, for example allows the user to control the information and time of download, which allow the user to insure the device is available for a call when the user needs it to be, and which allows the user to avoid receiving undesired information and interference from third parties through the cellular network by allowing the user to configure the device into a data download mode before receiving data downloads.

In clear contrast, Ozaki teaches both an automatic download which is totally relevant or an approach in which a user causes the handheld unit in the command transmission step 512 of Fig. 12 to send a command to a host 600. The two approaches are fundamentally different as

will be illustrated by several examples.

Example 1

The user is in a conference and wants both to not receive messages and to use a device, such as a PDA, to make notes of the meeting without interruption.

Under the present invention, the user configures the "portable information device" so it is not in the data download mode. No data is downloaded and the device can be used for any desired purpose.

With Ozaki, if the central processing unit wants to send a message, apparently the "FILE FETCH?" notification 801 of Fig. 13 will be sent and displayed automatically. The user is then faced with ignoring the notification or with responding by sending a fetch command a fetch denial.

Example 2

The user wants to not download during the day, while downloading at night when he is sleeping so he can check his messages in the morning. By configuring the "portable information device" of the claims before bed, the user readily achieves this result.

With Ozaki, the user can automatically get messages at night, but in this automatic embodiment, he is susceptible to automatically receiving messages at anytime during the day. Conversely, in the Ozaki embodiment in which the user confirms he wants to receive each message, he will not automatically receive messages during the night.

Example 3

Because the user of the portable information device of the claims simply configures the device locally into a data download mode, the device is potentially compatible with a wide range of cellular systems. By contrast, Ozaki sends commands and only systems designed to receive

and interpret those commands will be compatible.

Example 4

The user wants to be able to seek to limit the attacks of hackers and the like. By configuring the "portable information device" of the claims in the download data mode at a time of his choosing, the user can potentially substantially reduce such attacks by selecting a time subject to no or a low attack load. By contrast, any hacker learning the ins and outs of the Ozaki approach could send messages to the Ozaki terminal. A user could ignore them or respond with a fetch denial, but such responses are time consuming just as deleting junk email is.

While other examples might well be posited, Ozaki clearly does not anticipate this claim.

Claim 29

Claim 29 requires the steps of "configuring said device in a receive mode for receiving digital information" and "receiving said digital information from the personal computer over the wireless communication path after said device is configured to receive said digital information" For the reasons urged above in connection with claim 22, claim 29 is not anticipated by Ozaki.

Claim 33

Claim 33 requires "a user interface for placing said device in a receive mode for receiving said digital information from the personal computer over said wireless communication path, said communication component receiving said digital information from the personal computer after said device is configured by said user interface to receive said digital information". For the reasons urged above in connection with claim 22, claim 33 is not anticipated by Ozaki.

Claims 23, 21 and 34

All of these claims recite "wherein said digital information includes a personalized directory of telephone numbers." The relied upon portions of Ozaki do not meet this language.

More specifically Col. 9, lines 11-32 of Ozaki describe how the arrived message 200 includes a numeral 212 which represents a telephone number of the host computer 110 in which the file is stored. Such a number or numbers does not comprise "a personalized directory" such as the user's contact list from his or her personal computer. Ozaki does not anticipate these claims.

Claims 26 and 37

Both these claims require that "said information includes a personalized directory of appointments". Again, Figs. 4 and 7 and the text of Ozaki at col. 9, lines 11-32 are relied upon. These figures do not show appointments, and that text does not mention "appointments". Consequently, Ozaki does not anticipate.

Claims 28, 32 and 38

All of these claims recite that "said personalized directory includes a name associated with each of said telephone numbers." Again, Figs. 4 and 7 and the text at col. 9, lines 11-32 are relied upon. These figures do not show a name and that text does not mention a "name". To the contrary, filing and electronic mail ids are all that are shown and discussed. Consequently, Ozaki does not anticipate.

Claims 28 and 39

Both these claims recite "an audible alerting signal at a predetermined time, said predetermined time being associated with a particular one of the appointments within the personalized directory of appointments". The relied upon text at Ozaki col. 4, lines 27-43 and col. 12, lines 40-56 says nothing of the sort. Ozaki does not anticipate these claims.

B. The Examiner's Findings of Anticipation are Also Contrary to Law of the Federal Circuit

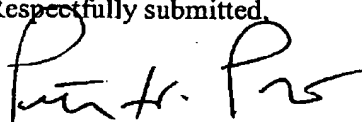
Ozaki does not teach every aspect of the claims as required under 35 U.S.C. § 102 and MPEP § 706.02. As addressed by the Federal Circuit, anticipation under Section 102 can be found only if a reference shows exactly what is claimed, where there are differences between the reference disclosure and the claim, a rejection must be based on obviousness under Section 103.

Titanium Metals Corp. v. Banner, 227 U.S.P.Q. 773 (Fed. Cir. 1985).

8. Conclusion

The rejection of claims 22-39 should be reversed and the application promptly allowed.

Respectfully submitted,



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CLAIMS APPENDIX
(Claims Under Appeal)

22. A portable information device comprising:
- a memory for storing and retrieving digital information;
- communication means for connecting to a communication path established between a personal computer and said device, said communication path including a portion comprising a wireless communication path in a cellular telephone system; and
- configuring means for placing said device in a receive mode for receiving said digital information from the personal computer over said wireless communication path, said communication means receiving said digital information from the personal computer after said device is configured by said configuring means to receive said digital information, said communication means storing received digital information into said memory.
23. The portable information device of claim 22 wherein said digital information includes a personalized directory of telephone numbers.
24. The portable information device of claim 22 wherein said configuring means includes a user interface for a user to initiate placing said device in said receive mode.
25. The portable information device of claim 22 wherein said memory includes a database allowing access to stored information to a user.
26. The portable information device of claim 22 wherein said information includes a personalized directory of appointments.
27. The portable information device of claim 23 wherein said personalized directory includes a name associated with each of said telephone numbers.
28. The portable information device of claim 26 including means for providing an

audible alerting signal at a predetermined time, said predetermined time being associated with a particular one of the appointments within the personalized directory of appointments.

29. A method of remotely programming a portable information device, said device operating to wirelessly communicate in a cellular telephone system, the method comprising:

- configuring said device in a receive mode for receiving digital information;
- connecting to a communication path established between a personal computer and said device, said communication path including a portion comprising a wireless communication path in a cellular telephone system; and
- receiving said digital information from the personal computer over the wireless communication path after said device is configured to receive said digital information.

30. The method of claim 29 further comprising:

- storing the received digital information into a memory.

31. The method of claim 29 wherein said digital information includes a personalized directory of telephone numbers.

32. The method of claim 31 wherein said personalized directory includes a name associated with each of said telephone numbers.

33. A portable information device comprising:

- a memory for storing and retrieving digital information;
- a communication component connecting to a communication path established between a personal computer and said device, said communication path including a portion comprising a wireless communication path in a cellular telephone system; and
- a user interface for placing said device in a receive mode for receiving said digital information from the personal computer over said wireless communication path, said

communication component receiving said digital information from the personal computer after said device is configured by said user interface to receive said digital information, said communication component storing received digital information into said memory.

34. The portable information device of claim 33 wherein said digital information includes a personalized directory of telephone numbers.

35. The portable information device of claim 33 wherein said configuring means includes a user interface for a user to initiate placing said device in said receive mode.

36. The portable information device of claim 33 wherein said memory includes a database allowing access to stored information to a user.

37. The portable information device of claim 33 wherein said information includes a personalized directory of appointments.

38. The portable information device of claim 34 wherein said personalized directory includes a name associated with each of said telephone numbers.

39. The portable information device of claim 37 including means for providing an audible alerting signal at a predetermined time, said predetermined time being associated with a particular one of the appointments within the personalized directory of appointments.

EVIDENCE APPENDIX

None.

None.

RELATED PROCEEDINGS APPENDIX